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No. 01-1634

In the

Supreme Court of the United States

JOHN KENNETH STEIN,

Petitioner,

v.

WILLIAM D. ROBISON, as trustee under the Last Will and Testament of Nicholas Stein; CHRISTOPHER WELCH, as personal representative of the estate of Nicholas Stein; JOHN STEIN; TAMARA STEIN ,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE WASHINGTON COURT OF APPEALS DIVISION TWO

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF THE CASE

I. GENERAL FACTUAL BACKGROUND.

The late Nicholas Stein (Mr. Stein) was a farmer in Clark County, Washington, which is part of the Portland, Oregon, Metropolitan area. John Kenneth Stein (Petitioner) is the son of Nicholas Stein. John Stein and Tamara Stein (the grandchildren) are Petitioner's adult children and Mr. Stein's grandchildren.

Mr. Stein was possessed of significant assets. These included approximately one hundred and twenty acres of farmland and various securities valued in excess of $700,000.

Toward the end of his life, Mr. Stein's health was failing. His long time attorney, Ned Hall, was appointed as Mr. Stein's limited guardian. A number of issues arose concerning Mr. Stein's property. One involved an action to set aside the transfer of a real estate contract from Mr. Stein to Petitioner on the basis of fraud and undue influence. Mr. Hall represented Mr. Stein's interests. Thelma Lund, who was a friend of Mr. Stein, testified against Petitioner. The contract was ultimately set aside.

Petitioner was quite frustrated by these developments. By 1987, he had engaged "hit men" to cause Mr. Hall and Ms. Lund to have "accidents". Thelma Lund was killed during that year, and attempts were made on Mr. Hall's life.

Mr. Stein died in 1987, in a Vancouver, Washington, nursing home. At the time of his death, two wills were in existence. He had executed the first in 1984. It left ten percent (10%) of his gross estate to Thelma Lund. The remainder was to be divided equally between Petitioner and the grandchildren. The grandchildren's shares were to be placed in trust.

Petitioner procured a will slightly more than four months before Mr. Stein's death. It left $10,000.00 to Ms. Lund; $50,000.00 to each of the grandchildren; and virtually everything else to Petitioner. The grandchildren have always claimed that Mr. Stein was not competent to execute this later will or that it was procured by Petitioner's fraud or undue influence.

Shortly after Mr. Stein's death, Petitioner commenced a probate proceeding in the Circuit Court of the State of Oregon for Multnomah County (Portland). He obtained access to certain securities that his father owned that had been held within his father's guardianship. These were physically located at a bank in Portland. He deposited these securities in an account in his own name, not in the name of his father's estate. He then borrowed against this account to purchase a residence for his spouse. He also placed some cash into a bank account in his own name.

The Circuit Court became concerned about Petitioner's actions as personal representative and issued an order impounding the assets in December of 1987. In April of 1988, it removed Petitioner as personal representative on its own motion.

Meanwhile in March of 1988, Mr. Stein's 1984 will was admitted to probate in the Superior Court for the State of Washington for Clark County. By the end of the year, the Multnomah County Circuit Court closed its interest in Mr. Stein's estate. It approved the final account of the successor personal representative and directed that all assets under his control be delivered to Mr. Stein's Washington personal representative. These included what was left of the proceeds of the securities. Significantly, the Circuit Court specifically found that Mr. Stein was a resident and inhabitant of the State of Washington at the time of his death.

By the end of 1988, criminal charges had been filed against Petitioner in connection with the death of Ms. Lund

and the attempts on Mr. Hall's life. He was arrested and confined in the Clark County jail. He was also served with process in a wrongful death action filed on behalf of Marlene Winchester as personal representative of Ms. Lund's estate. He immediately executed assignments of his share of his father's estate to his spouse.

During 1989, the personal representative obtained court approval to liquidate the securities. These were used to pay administrative expenses, estate taxes, and certain claims against Mr. Stein's estate. The court also approved use of a portion of these funds to pay Petitioner's attorney's fees in connection with the criminal charges that were pending. He was also allowed monies for living expenses and for the purchase of a computer. By January of 1991, the proceeds of the securities had been virtually exhausted. Petitioner had received a total of $149,600.00 in payments by that time.

In 1991, the criminal case went to trial. Petitioner was convicted of Attempted First Degree Murder and First Degree Burglary in connection with the attempts to kill Mr. Hall. He was acquitted, however, of conspiracy and murder charges in connection with Thelma Lund's death.

The wrongful death action also went to trial in 1991. Ms. Lund's personal representative obtained a judgment against Petitioner in the amount of $4 million with interest of twelve percent (12%) per annum. Petitioner appealed but made no attempt to supercede the judgment. The judgment was ultimately affirmed. *Winchester v. Stein*, 86 Wn.App. 458, 937 P.2d 618 (1997) *affirmed in part and reversed in part on other grounds*, 135 Wn.2d 838, 959 P.2d 1077 (1988).

The Lund estate sought execution of its judgment. It levied on Petitioner's share of his father's estate. By that time, Mr. Stein's real property was the estate's only substantial asset. At a sheriff's sale, the Lund estate bid $600,000.00 of its judgment to obtain Petitioner's interest in the real property. This was less than the amount of interest

that had accrued on the judgment. Therefore, the principal was not reduced by the sale.

Ultimately, the sheriff's sale was confirmed and a sheriff's deed was issued to the Lund estate. All believed that the execution sale had the effect of conveying Petitioner's entire interest in Mr. Stein's estate to Ms. Winchester as personal representative of Thelma Lund's estate.

Meanwhile, the probate proceedings continued. Petitioner moved to admit the 1987 will to probate. The grandchildren contested the validity of the will. The trial court determined that the 1984 will would prevail. Petitioner appealed and obtained a reversal. The Court of Appeals ordered a will contest to determine the validity of the 1987 will.

After the mandate was returned, the Lund estate sought partial distribution of Petitioner's share of his father's estate on the basis of the sheriff's deed it had received. Petitioner's spouse objected and produced the assignments that had been given to her in 1988. The Lund estate then petitioned to avoid the assignments as fraudulent conveyances. The matter was tried and the assignments were held to be fraudulent conveyances, which were then voided.

The grandchildren then obtained an order depriving Petitioner of standing in the probate action and substituting the Lund estate in his stead as the real party in interest. This was based upon the execution sale and the fraudulent conveyance of Petitioner's interest in the estate to his spouse.

This development allowed the grandchildren to reach a settlement with the Lund estate on the distribution of Mr. Stein's estate. It was agreed that the 1984 will was the only valid will of Nicholas Stein. The grandchildren would receive two-thirds of the net estate less previous partial distributions, which would be placed in a testamentary trust. The Lund estate would receive Petitioner's one-third share

less partial distributions made to him, his creditors, or for his benefit. The personal representative retained certain funds pending final closure of the estate.

This settlement was approved by the court on March 5, 1998. Petitioner objected to these motions. He did not argue, however, that the Lund estate had not executed on all of his interest in his father's real property. He also did not request a stay of consideration of the settlement until the appeal of his criminal conviction had been decided.

In 1999, the Court of Appeals of the State of Washington reversed Petitioner's criminal conviction. He then moved to vacate the judgment that the Lund estate had obtained against him. Ultimately, a settlement was reached. The Lund estate was allowed to keep everything it had obtained in the settlement with the grandchildren together with its share of what had yet to be distributed. In return, the Lund estate stipulated to an order purporting to vacate its judgment "ab initio," to void the previous sheriff's sale, and to dismiss its case against Petitioner with prejudice. Mr. Stein's personal representative and the grandchildren were not parties to this stipulation. The trial judge in the wrongful death suit entered the stipulated order but interlined the language that voiding of the sheriff's sale was "subject to further review."

In short, Petitioner allowed the Lund estate to retain everything it had received in its settlement with the grandchildren in exchange for an order voiding the judgment. The Lund estate was not required to disgorge anything.

Mr. Stein's personal representative then petitioned to close the estate and to make final distribution in accordance with the settlement between the grandchildren and the Lund estate. Petitioner's standing was restored such that he was allowed to present argument in support of his position. Nonetheless, the trial court approved the final report and allowed all administration costs. It decreed that the

grandchildren would receive two-thirds of what remained with the other third going to the Lund estate.

II. ARGUMENTS RAISED BY PETITIONER BELOW.

John Kenneth Stein asks for a writ of certiorari so that the Supreme Court may consider two issues: whether the due process clause of the Fourteenth Amendment to the United States Constitution requires a civil judgment and derivative rights to be set aside when the jury hearing the case considered felony convictions that were later reversed as violative of due process; and whether a decision by the Multnomah County Circuit Court order should be afforded full faith and credit. He has raised the second issue at every stage of the proceedings. The first, however, has not been fairly argued or presented.

The due process issue was not presented to the trial court in the probate proceeding. In his opening brief to the Court of Appeals, petitioner assigned error to the approval of the settlement between the Lund estate and the grandchildren. He did not raise his due process claim as an issue to be presented and did not discuss it in his opening brief. After the respondents submitted their brief, petitioner did not raise his due process claim in his Reply Brief although he did allude to the fact that his criminal conviction had been reversed. Petitioner moved for reconsideration after the Court of Appeals rendered its decision. His motion for reconsideration hints at a due process concern at Page 6. There is no argument or citation to authority, however. Petitioner also sought review of the Court of Appeals' decision by the Washington Supreme Court. He argued that review should be accepted to relieve him of the consequences of his reversed criminal conviction. This argument was also not accompanied by any authority.

Since this issue did not appear to have been raised below, it was not addressed by the personal representative or the grandchildren in their appellate briefing. As petitioner

concedes, the Court of Appeals did not decide this issue. Petition for Writ of Certiorari, p. 35.

Washington Rules of Appellate Procedure require that tables of authority be submitted in an opening brief, a reply brief, and petition for review to the Supreme Court. The indexes in these briefs and pleadings that petitioner submitted do not contain any reference to the due process clause of Fourteenth Amendment to the United States Constitution.

III. DECISION BY THE COURT OF APPEALS.

This case was decided by the Court of Appeals of the State of Washington. Petitioner sought review by the Supreme Court, which was denied. The decision of the Court of Appeals clearly rests on a Washington rule of appellate procedure. The decision contains no reference to the United States Constitution, any other issue of federal law or procedure, or any precedent decided by a federal court.

ARGUMENT WHY REVIEW SHOULD NOT BE GRANTED

I. CERTIORARI SHOULD BE DENIED BECAUSE THE COURT OF APPEALS' DECISION RESTED ON STATE LAW.

The Supreme Court has long held that it will not consider an issue of federal law on direct review from a judgment of a state court if that judgment rests on a state-law ground that is independent of the merits of the federal claim and is an adequate basis for court's decision. ***Michigan v. Long***, 463 U.S. 1032, 77 L.Ed.2d 1201, 103 S.Ct. 3469 (1983); ***Harris v. Reed***, 489 U.S. 255, 103 L.Ed.2d 308, 109 S.Ct. 1038 (1989); ***Coleman v. Thompson***, 501 U.S. 722, 115 L.Ed.2d 640, 111 S.Ct. 2546 (1991).

In this case, the Court of Appeals rested its decision on a rule of appellate procedure. It declined to overturn a settlement reached between the Lund estate and the grandchildren because of petitioner's failure to raise one of his issues before the trial court. The opinion does not mention federal law or constitutional claims in any way. Since the decision was clearly based on Washington State law, the Supreme Court should not accept review.

II. THE SUPREME COURT SHOULD DENY REVIEW OF PETITIONER'S DUE PROCESS CLAIM BECAUSE IT WAS NOT RAISED BELOW.

The Supreme Court will not consider a petitioner's federal claim unless that claim was either addressed by or properly presented to the state court that rendered the decision sought to be reviewed. *Adams v. Robertson*, 520 U.S. 83, 137 L.Ed.2d 203, 117 S.Ct. 1028 (1997); *Campbell v. Louisiana*, 523 U.S. 392, 140 L.Ed. 551, 118 S.Ct. 1419 (1998). Petitioner concedes that the Court of Appeals did not specifically address this due process issue. That means that he bears the burden of demonstrating that he properly presented the issue to the Court of Appeals. This is a burden he cannot carry.

In Washington, all issues and matters for consideration by the appellate court must be raised in the opening brief. An issue will not be considered if it is argued for the first time in a reply brief. *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992); *Fire Protection District v. Yakima*, 122 Wn.2d 371, 397, 858 P.2d 245 (1993). This rule applies even to errors of constitutional magnitude. *State v. Manthie*, 39 Wn.App. 815, 826 fn.1, 696 P.2d 33 (1985); *Oostra v. Holstine*, 86 Wn.App. 536, 543, 937 P.2d 195 (1997). Furthermore, all issues raised on appeal — including constitutional issues — must be supported by argument and citations to legal authority or they will not be considered. RAP 10.3(a)(5); *Schmidt v. Cornerstone Investments*, 115 Wn.2d 148, 160, 795 P.2d 1143

(1990); *American Legion v. Walla Walla*, 116 Wn.2d 1, 7, 802 P.2d 784 (1991).

Petitioner's due process argument was not advanced in his opening brief. He makes allusion elsewhere to the reversal of his criminal conviction because of a failure of due process. He presented, however, no cogent argument or citation to authority as to how he was denied due process by the probate decree from which he appealed In fact, the due process clause of the Fourteenth Amendment to the United States Constitution — the bedrock of his argument — was not even cited in his briefs or his petition for review to the Washington Supreme Court. For these reasons, the Supreme Court should not take review of this issue.

In any event, the arguments petitioner advances are not supported by the cases he cites. He has referred to *Custis v. United States*, 511 U.S. 485, 128 L.Ed.2d 517, 114 S.Ct. 1732 (1994) and *Daniels v. United States*, 532 U.S. 374, 149 L.Ed.2d 590, 121 S.Ct. 1578 (2001) to support his contention. In both cases, however, the Supreme Court ruled that a criminal defendant could not challenge the constitutionality of prior convictions in a federal sentencing proceeding or on a motion made under 28 U.S.C. §2255 unless he could demonstrate a violation of a right to counsel. These cases suggest, in opposition to petitioner's argument, that a person may not be protected from all collateral consequences of the denial of due process related rights.

III. PETITIONER'S FULL FAITH AND CREDIT ARGUMENT LACKS MERIT.

Mr. Stein's estate contained both securities and real estate. Petitioner contends that disposition of the securities is governed by Oregon law because they were located in Oregon after his father's death and because the 1987 will was initially admitted to probate in the Circuit Court for Multnomah County. He then urges application Oregon abatement rules to obtain a portion of the value of those

securities. It is conceded that he has raised this argument throughout the proceedings. This argument fails, however, because the Circuit Court had no jurisdiction over the securities in Nicholas Stein's estate.

Washington is obviously required to give full faith and credit to the judgments of sister states. That means that a foreign judgment must be given the same recognition it would receive in the state of rendition. If the rendering state had no jurisdiction, the judgment need not be respected and is considered a nullity. *Durfee v. Duke*, 375 U.S. 106, 11 L.Ed.2d 186, 84 S.Ct. 242 (1963).

Oregon limits its probate jurisdiction over the property of a non-domiciliary. By statute, the will of a non-domiciliary can operate only on property in Oregon. ORS 113.065(1). Oregon has construed this statute to hold that it lacks jurisdiction to admit to probate the will of a non-domiciliary who has no real property in Oregon. Personal property in Oregon is not sufficient to vest Oregon courts with probate jurisdiction. *West v. White*, 92 Or.App. 401, 758 P.2d 424 (1988), affirmed, 307 Or. 296, 766 P.2d 383 (1988).

Nicholas Stein owned no Oregon real property at the time of his death. The Multnomah County Circuit Court found that he was a resident of the State of Washington at that time. This means that Oregon had no probate jurisdiction over his estate. Therefore, the Circuit Court order on which petitioner relies is void for lack of jurisdiction and need not be respected by Washington courts.

It is true that a contrary decision was reached by Washington's Court of Appeals in its earlier decision concerning this estate. *In re Estate of Stein*, 78 Wn.App. 251, 896 P.2d 740 (1995). That portion of the Court of Appeals' decision was incorrect and need not be credited as the law of the case. *Christianson v. Colt Industries*, 486 U.S. 800, 100 L.Ed.2d 811, 108 S.Ct. 2166 (1988); *Folsom v. County of Spokane*, 111 Wn.2d 256, 263-4, 759 P.2d 1196 (1988).

CONCLUSION

This matter was clearly decided on a state law basis. For that reason alone, the petition for certiorari should be denied. Furthermore, petitioner's due process claim was neither presented nor decided below. This means it should not be considered by the Supreme Court. In any event, the claims petitioner seeks to waive have no merit. On these bases, the Supreme Court should deny the petition for certiorari.

RESPECTFULLY SUBMITTED this 31st day of May, 2002.

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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

Department of Probate

No. 8708-91751

IN THE MATTER OF THE ESTATE OF
NIICHOLAS A. STEIN, Deceased.

ORDER APPROVING FINAL ACCOUNT
AND DIRECTING DISTRIBUTION

This matter coming on to be heard upon the petition of RICHARD E. PAUL, administrator C.T.A. of the above entitled estate, for an order approving the final account on file herein; and

IT APPEARING TO THE COURT, That at the time of his death said NICHOLAS A. STEIN was a resident and inhabitant of the State of Washington, as more particularly appears from the affidavit of Christopher D. Welch, on file herein; that as the estate of said decedent should properly be probated in the State of Washington rather than the State of Oregon, a. final account was filed herein;

* * *

IS FURTHER ORDERED, That the residue of said estate be paid and distributed to CHRISTOPHER D. WELCH, personal representative of the Estate of NICHOLAS A. STEIN, deceased, in the State of Washington, for final settlement and distribution as may be determined by the Courts of that State.

* * *

DATED this 30th day of November, 1988.

Lee Johnson, Judge

No. 24899-9-II

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON

Regarding the Estate of Nicholas A. Stein

JACK STEIN,
Appellant,

v.

CHRISTOPHER WELCH, personal representative,
WILLIAM D. ROBISON, testamentary trustee,
JOHN STEIN and TAMI STEIN,
Respondents.

BRIEF OF APPELLANT

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ASSIGNMENTS OF ERROR

The Superior Court erred (1) when it denied Jack Stein's motion to revoke administration of the 1984 will; (2) when it denied Jack Stein's motion to remove the administrator; (3) when it refused to set a date for trial of the will contest; (4) when it substituted the Lund Estate for Jack Stein as real party in interest; (5) when it partially distributed the estate; (6) when it approved an agreement among the administrator, the Stein grandchildren, and the Lund Estate for settlement of the estate; (7) when it refused to rescind its approval of the settlement after it restored standing to Jack Stein; (8) when it refused to abate the distribution to the testatmentary trust; and (9) when it entered a final decree distributing the estate according to the 1984 will.

ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Did the Oregon probate court have subject matter jurisdiction over certificated securities in the custody of an Oregon bank on the date of Nicholas Stein's death?

2. Was it an abuse of discretion to permit the administrator to retain his office after the Superior Court had been advised of his firing from a civil service job for fraternizing with cocaine users and defrauding a jeweler?

3. Should the Superior Court have completely substituted the Lund Estate for Jack Stein as real party in interest when its sheriff's deed describes only about one-half of the devised real property?

4. Did the Lund Estate itself retain standing after the administrator had sold the entirity of the devised real property to third parties?

5. Should the Superior Court have partially distributed all but a small portion of the estate without first conducting the will contest mandated by this Court?

6. Should the Superior Court have approved an agreement for settlement of the estate without insisting upon Jack Stein's consent or, at the very least, affording him notice and an opportunity to be heard?

7. Even if the Superior Court proceeded correctly when it adopted the 1984 will, should it nevertheless have given full faith and credit to Oregon's adoption of the 1987 will and abate the share of the testamentary trust to account for personal property, found in Oregon, that was consumed by estate administration?

8. When, after this Court reversed Jack Stein's criminal convictions, the Lund Estate agreed to vacate its judgment ab initio and rescind the sheriff's sale, should the Superior Court have rescinded the agreed settlement to which the Lund Estate had stipulated in Jack Stein's stead?

9. Should Jack Stein be awarded his attorney's fees on this appeal?

No. 24899-9-II

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON

Regarding the Estate of Nicholas A. Stein

JACK STEIN,
Appellant,

v.

CHRISTOPHER WELCH, personal representative,
WILLIAM D. ROBISON, testamentary trustee,
JOHN STEIN and TAMI STEIN,
Respondents.

REPLY BRIEF

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No. 24899-9-II

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON

Regarding the Estate of Nicholas A. Stein

JACK STEIN,
Appellant,

v.

CHRISTOPHER WELCH, personal representative,
WILLIAM D. ROBISON, testamentary trustee,
JOHN STEIN and TAMI STEIN,
Respondents.

APPELLANT'S MOTION TO RECONSIDER UNPUBLISHED OPINION

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IDENTITY OF MOVING PARTY

Appellant Jack Stein seeks the relief designated below.

RELIEF REQUESTED

Appellant requests that this court reconsider its unpublished opinion of February 15, 2001 and reverse the Superior Court decisions to which he has assigned error.

Appellant requests, in the alternative, that this court revise its opinion to make a complete disposition of the arguments presented to this court for its consideration.

ARGUMENT

Thirty-five days after the oral argument, this court issued a seven-page opinion that concluded its review of a fourteen-year probate case, a case involving substantial public interest, complex legal issues, large sums of money, and a party who has spent the past twelve years in prison as a result of a process that—in the opinion of this court and the federal district court—has been plagued with constitutional errors at the trial and appellate levels.

Jack Stein disagrees, of course, with the court's opinion; but he is more concerned with what the opinion has left unsaid. The opinion upheld the settlement agreement reached by Jack Stems adversaries in the Superior Court but did not dispose of each alternative argument as to why that agreement is void. Your appellant has argued, of course, that the agreement is void because he retained an interest in his father's estate which escaped execution and sale and remained, therefore, a necessary party to any settlement. But he also argues there has been a failure of the Lund Estate's apparent interest in this estate insofar as its judgment has been infected with the same constitutional errors which led to a reversal of his felony convictions. These matters have been fully briefed. It is fair neither to Jack Stein nor to the

appellate process to enter a decision without fully addressing these alternative arguments.

Jack Stein urges this court to take the occasion of this motion to issue a more complete opinion. He is not asking for an academic exercise. He certainly intends, if there is no change in the outcome of this case, to file a petition for further review. A more thorough discussion of the issues would better enable the Supreme Court to consider the merit of your appellant's claims.

Jack Stein will soon be called upon to explain to the Supreme Court why, in his opinion, this court has erred. But this present motion is directed to the Court of Appeals, and it is never a comfortable task to attribute error to one's audience. It may be helpful simply to state that your appellant, at the very least, asks this court to pause for a moment, consider the gravity of its decision, and grant him the dignity of jousting with a visible opponent.

I. THE OPINION SHOULD EXPLAIN WHY THE PROBATE SETTLEMENT SURVIVED THE RULE 60 ORDER IN THE WRONGFUL-DEATH CASE

This division of the Court of Appeals has been a nexus for the various criminal, civil, and probate cases involving Jack Stein. It would be tempting to consider these cases in isolation from one another, but justice requires that we do otherwise.

It is clear from the briefing and from the February 15th opinion that this probate matter is inextricably bound to a wrongful-death case brought against Jack Stein by the Lund Estate. The wrongful-death case is itself inextricably bound to a claim brought against Jack Stein under the Criminal Profiteering Act insofar as the plaintiffs successfully moved to consolidate these two actions for trial. At the conclusion of that trial, the jury was permitted to inspect certified copies of the four felony convictions against Jack Stein. In the meanwhile, Jack Stein's appeal from those convictions lay

dormant because constitutional errors had interrupted the appellate process. Some years later, at the direction of the federal district court, his appeal was reinstated. Eventually, the convictions against Jack Stein were reversed.

The reversal triggered a negotiation process. Jack Stein believed, on good authority, that the wrongful-death judgment was void. When a jury in a civil action enters a substantial judgment against a defendant after becoming aware of multiple felony convictions against him, the unfairness of the resulting judgment cannot be seriously questioned when those convictions are later reversed.

The willingness of the Lund Estate to negotiate with Jack Stein demonstrates an awareness of its dilemma. Given the apparent bad feelings between those parties, the negotiation must have been the epitome of an arm's length transaction. Eventually, the parties arrived at a stipulation to vacate the wrongful-death judgment ab initio and to rescind the sale by the Clark County Sheriff of a portion of Jack Stein's real-property interest in this estate.

This court has not yet addressed why, in its opinion, the Rule 60 order fails to accomplish what, by its plain meaning, it purports to do. The Stein grandchildren have argued that the order was the result of a collusive stipulation. But Jack Stein's right to bring his Rule 60 motion was triggered by the reversal of his criminal convictions. He had no power to control the outcome or timing of his criminal appeal.

No Washington case appears to have addressed this precise Rule 60 issue. It would be appropriate therefore to consider what the federal courts have done. See Warren, Little & Lund, Inc. v. Max J. Kuney Co., 115 Wn.2d 211, 215, 796 P.2d 1263 (1990). It is the rule in federal court that a judgment is fully extinguished if the party seeking to vacate that judgment does so for reasons outside of his or her control. Compare U.S. Bancorp Mortgage Co. u. Bonner Mall Partnership, 513 U.S. 18, 115 S.Ct. 386, 130 L.Ed.2d 233 (1994)

with United States v. Munsingwear, Inc., 340 U.S. 36, 71 S.Ct. 104, 95 L.Ed. 36 (1950). See Reply Brief at 7-8.

Insofar as the triggering event for the Rule 60 motion—the outcome of the criminal appeal—was indeed outside of Jack Stein's control, the wrongful-death judgment and the sheriffs sale upon which it was based are without lawful effect. They can be the source of no alleged right or interest by anyone who is not a bona fide purchaser.

This type of situation is actually rather common, particularly in real estate transactions. It arises when Person A, believing himself to be the owner of certain real estate, enters into a contract to sell that property to Person B. It is later proven, through a chain-of-title analysis, that Person C is the true owner. The sale from A to B would be void. B's remedy would be a claim against A who, in the usual case, would have title insurance.

To be utterly forthright, this court should explain why the very same constitutional error which has led to a reversal of Jack Stein's criminal convictions should not also lead, via the Rule 60 order, to a complete extinguishment of the wrongful-death judgment and the judicial sale of Jack Stein's interest in his father's estate. This issue was fully and fairly brought not simply to the attention of the Superior Court but also to the attention of this court.

* * *

RESPECTFULLY SUBMITTED this 7th day of March 2001.

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No. 24899-9-II

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Regarding the Estate of Nicholas A. Stein

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PETITION FOR REVIEW

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1. Should a will contest be reinstated when the proponent of one of the wills, as a result of an appellate decision in a related case, succeeds in vacating a judgment under which his interest in the estate had been sold to the judgment creditor who proceeded to settle the will contest with the adverse party?

2. If Oregon administers a portion of a decedent's estate on the basis of one will and Washington administers the balance of the estate on the basis of another, does the Full Faith and Credit Clause, U.S. Const. art. IV, § 1, permit the Washington court, after it gains control of the Oregon property, to favor the Washington distributees by making a disproportionate assignment of administrative expenses to the Oregon property?

* * *

ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

I. REVIEW SHOULD BE ACCEPTED TO ELIMINATE THE COLLATERAL EFFECTS OF ERROR IN THE CRIMINAL CASE

Your petitioner stands before this court relieved of the stigma of criminal conviction but not relieved of the consequences. Because of a unique pattern of events, the erroneous felony convictions have been given real collateral effects. Although your petitioner has diligently undertaken the necessary and proper steps to undo this injustice, he has been thwarted by the lower courts. To completely remove the consequences of error in State v. Stein, it falls upon this court to accept review.